

1 Rule 63. Disability or disqualification of a judge.

2 (a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is
3 unable to perform the duties required of the court under these rules, then any other judge of that
4 district or any judge assigned pursuant to Judicial Council rule is authorized to perform those
5 duties. The judge to whom the case is assigned may in the exercise of discretion rehear the
6 evidence or some part of it.

7 (b) Disqualification.

8 (b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a
9 judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and
10 shall be supported by an affidavit stating facts sufficient to show bias, prejudice or conflict of
11 interest.

12 (b)(1)(B) The motion shall be filed after commencement of the action, but not later than 20
13 days after the last of the following:

14 (b)(1)(B)(i) assignment of the action or hearing to the judge;

15 (b)(1)(B)(ii) appearance of the party or the party's attorney; or

16 (b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable
17 diligence should have learned of the grounds upon which the motion is based.

18 If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon
19 as practicable.

20 (b)(1)(C) Signing the motion or affidavit constitutes a certificate under Rule 11 and subjects
21 the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one
22 motion to disqualify in an action.

23 (b)(2) The judge against whom the motion and affidavit are directed shall, without further
24 hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing
25 judge. If the judge grants the motion, the order shall direct the presiding judge of the court or, if
26 the court has no presiding judge, the presiding officer of the Judicial Council to assign another
27 judge to the action or hearing. The presiding judge of the court, any judge of the district, any
28 judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as
29 the reviewing judge.

(b)(3)(A) If the reviewing judge finds that the motion and affidavit are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(b)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion and affidavit an affidavit responsive to questions posed by the reviewing judge.

(b)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

(c) Discretionary recusal after remand. If an action is remanded after appeal, the judge to whom the matter is assigned may, either sua sponte or on motion of one of the parties, exercise the discretion to recuse himself or herself from further consideration of the action and allow it to be reassigned to another judge. In exercising such discretion, the judge should evaluate, in light of the nature of the decision on appeal and the extent of the issues remaining for decision on remand:

(c)(1) whether and to what extent recusal might impede the timely resolution of the issues remaining on remand, as in a case where the judge's familiarity with the law or the facts of the case may be important to the timely resolution of the action; and

(c)(2) whether and to what extent recusal might avoid the appearance or perception of bias or prejudice against the parties prevailing on appeal.